

19-D-01052

Dear [REDACTED]

Thank you for your email of 5 June requesting the following under the Official Information Act 1982 (the Act):

all advice and communications on the drafting of [clause 10] of the Climate Change Response (Zero Carbon) Amendment Bill.

The Ministry for the Environment has identified parts of fourteen documents in scope of your request, as listed in the attached table. Some information within these documents has been withheld under the following sections of the Act:

9(2)(h) to maintain legal professional privilege

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

Relevant information is released by giving excerpts in accordance with section 16 of the Act. Some out of scope information has been removed from the documents being released to you.

Two of the documents in scope of your request are publicly available, and the request for this information is refused under section 18(d) of the Act. You can find links to where this information is publicly available in the attached table.

The Climate Change Response (Zero Carbon) Amendment Bill is currently before Parliament, and the Environment committee has called for submissions from the public. You can find out more about how to make a submission on the Parliament website: www.parliament.nz/en/pb/sc/make-a-submission/.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: www.ombudsman.parliament.nz.

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our website on our [OIA responses page](#) shortly after the response has been sent.

If you have any queries about this, please feel free to contact our Executive Relations team.

Yours sincerely



Lewis Stevens-Rembe
Acting Director, Climate Change

List of documents

Document no.	Document date	Content	Decisions	OIA sections applied
1	28 August 2018	Parts of an email chain with the subject line <i>Changes/risks Commission section</i>	Released in full	
2	18-24 September 2018	Parts of an email chain with the subject line <i>RIS and Cabinet Paper [in-confidence]</i>	Released in full	
3	30 October 2018	Parts of an email chain with the subject line <i>ICCC Terms Of Reference Cabinet Paper [IN-CONFIDENCE]</i>	Released in full	
4	17 December 2018	Parts of Cabinet paper <i>Proposed Climate Change Bill</i>	Refused	18(d). Available at: https://www.mfe.govt.nz/briefings-search
5	3 May 2019	Parts of <i>Climate Change Response (Zero Carbon) Amendment Bill</i>	Refused	18(d). Available at: http://legislation.govt.nz/bill/government/2019/0136/latest/LMS183736.html?src=qs
6	23 August 2018	Comments on a draft Cabinet paper (LGL)	Withheld	9(2)(h)
7	28 August 2018	Comments on a draft Cabinet paper (LGL)	Withheld	9(2)(h)
8	26 September 2018	Comments on a draft Cabinet paper (LGL)	Withheld	9(2)(h)
9	5 October 2018	Parts of an email chain between	Withheld	9(2)(h)

		policy and legal teams		
10	21 December 2018	Drafting instructions to the Parliamentary Counsel Office	Withheld	9(2)(h)
11	14 January 2019	Comments on a draft of the bill	Withheld	9(2)(h)
12	22 January 2019	Further drafting instructions to the Parliamentary Counsel Office	Withheld	9(2)(h)
13	5 March 2019	Parts of an email chain between policy and legal teams	Withheld	9(2)(h)
14	5 April 2019	Parts of an email chain between MfE and the Parliamentary Counsel Office	Withheld	9(2)(h)

Excerpts from email chain with the subject line *Changes/risks Commission section*

From: Samantha Hill
To: Bridget Fraser
CC: Sue-Ellen Fenelon
BCC:
Subject: Changes/risks Commission section

Sent Date: 28/08/2018 17:37
Received Date: 28/08/2018 17:37

Hi Bridget,

You asked at stand-up for a list of recent changes and risks to keep in mind when reading through the Cab paper/RIS. Here are some I'm aware of for the Commission.

Thanks,

Sam

[out of scope]

Risks/more thought needed:

[out of scope]

- Legal barriers to information-sharing

I have covered what I'm aware of (re: Stats Act and CCRA ss99/149) but haven't had a chance to scan for other barriers that might exist

[out of scope]

- Clarity needed on consequential amendments to CCRA

Samantha Hill – Policy Analyst, Climate Change Policy

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<https://www.facebook.com/ministryfortheenvironment/?hc_ref=SEARCH&fref=nf>

<<https://www.linkedin.com/company/ministry-for-the-environment>>

<https://twitter.com/mfe_news?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Eauthor>

Excerpts from email chain with the subject line *RIS and Cabinet Paper [in-confidence]*

From: Samantha Hill
To: Charlotte Berg
CC:
BCC:
Subject: RE: RIS and Cabinet Paper [in-confidence]

Sent Date: 24/09/2018 17:08
Received Date: 24/09/2018 17:08

Thanks for double-checking this!

I think you're right that the s149 approach might not work, and it would be better to have a specific exemption under section 99(2)(b) to allow the sharing of information for the purposes of the Commission's functions. That would deal with s256 (which we think is what the EPA reference was to) as well. We can discuss with Bronwyn and with legal tomorrow afternoon.

From: Samantha Hill
Sent: Monday, 24 September 2018 3:17 PM
To: Charlotte Berg <Charlotte.Berg@mfe.govt.nz>
Subject: RE: RIS and Cabinet Paper [in-confidence]

Hi Charlotte,

We included recs on s99, though not s250.

Our approach to dealing with the confidentiality provisions of s99 was to enable the Commission to request information under s149 for the purposes of carrying out its functions, and have the s99 obligations of confidentiality apply to the Commission in respect of that information. This advice is in the recs but not in the text of the cab paper [rec 106 refers].

I think that the EPA concern with s99 might be broader, ie, a preference to amend s99 to provide for appropriate information-sharing between agencies more generally. I agree that this would make sense (and then the s149 amendment wouldn't be needed for the Commission), but wasn't sure that it was within the scope of this bill to make that change. Do we have a view about s99 as it currently stands?

My understanding of s250 is that it specifically relates to the EPA's obligation to publish certain information. It is not required to publish information related to levies if that would disclose certain information about an identifiable person. From my reading, this doesn't limit the ability of the EPA to share that information under appropriate agreements, but it would be good to have a legal opinion on that. Of course, if we propose to amend the confidentiality provisions in the CCRA beyond what is needed for the Commission specifically, then we could look at whether it would be appropriate to include inter-agency sharing provisions under s250 as part of that.

Short answer: I think that what is proposed can make s99 work for the Commission, but it won't fix

any related information-sharing issues. It would be good to talk with Bronwyn about rec 106 specifically, and to test the broader question with our legal team.

Sam

From: Charlotte Berg
Sent: Monday, 24 September 2018 1:52 PM
To: Samantha Hill <Samantha.Hill@mfe.govt.nz <mailto:Samantha.Hill@mfe.govt.nz> >
Subject: FW: RIS and Cabinet Paper [in-confidence]

Hey Sam – can you look at the EPA's second comment – we had put something in the Commission section about sharing information, so I'm not sure if that's still in the Cab paper?

Thanks!

From: Emma Corbett
Sent: Monday, 24 September 2018 1:49 PM
To: Matthew Cowie <Matthew.Cowie@mfe.govt.nz <mailto:Matthew.Cowie@mfe.govt.nz> >; Charlotte Berg <Charlotte.Berg@mfe.govt.nz <mailto:Charlotte.Berg@mfe.govt.nz> >
Cc: Bridget Fraser <Bridget.Fraser@mfe.govt.nz <mailto:Bridget.Fraser@mfe.govt.nz> >
Subject: FW: RIS and Cabinet Paper [in-confidence]

Hi Both

Below are the EPS's substantive comments on the ZCB RIS and CP. They mention specifically the relationship between the ZCB and CCRA. Would appreciate your advice on the changes proposed.

Thank you

Emma

From: Bronwyn Kropp <Bronwyn.Kropp@epa.govt.nz <mailto:Bronwyn.Kropp@epa.govt.nz> >
Sent: Monday, 24 September 2018 10:59 AM
To: Emma Corbett <Emma.Corbett@mfe.govt.nz <mailto:Emma.Corbett@mfe.govt.nz> >
Cc: Mark Patchett (epa) <mark.patchett@epa.govt.nz <mailto:mark.patchett@epa.govt.nz> >; Evelyn Cole <Evelyn.Cole@epa.govt.nz <mailto:Evelyn.Cole@epa.govt.nz> >; Sarah Watson <Sarah.Watson@epa.govt.nz <mailto:Sarah.Watson@epa.govt.nz> >
Subject: RE: RIS and Cabinet Paper [in-confidence]

Kia ora,

Thank you for the opportunity to review the documents. We note the quick turnaround for responses and acknowledge the request for substantive comments only. We have three substantive comments relating to [out of scope], the interaction between the Zero Carbon Bill and Climate Change Response Act (CCRA) and the ability to provide information, and [out of scope].

[out of scope]

CCRA and providing information

In order for the EPA to meet its obligations under the Zero Carbon Bill, we recommend changes to the CCRA, particularly s 99, to allow information flow between agencies with responsibilities under the CCRA and the independent Commission whilst continuing to protect the confidentiality and commercial sensitivity of information received through the New Zealand Emissions Trading Scheme (ETS). The same consideration should be given to s 250 of the CCRA and the desirable level of sharing with respect to Synthetic Greenhouse Gas levies and information collected under Part 7 of the CCRA.

[out of scope]

Ngā mihi,

Bronwyn Kropp

Regulation Advisor

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The contents may be confidential and are not necessarily the opinions of EPA New Zealand.

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[out of scope]

Excerpts from email chain with the subject line *ICCC Terms Of Reference Cabinet Paper* [IN-CONFIDENCE]

From: Samantha Hill
To: Helen Murdoch [SSC]
CC: Sue-Ellen Fenelon
BCC:
Subject: RE: ICCC Terms Of Reference Cabinet Paper [IN-CONFIDENCE]

Sent Date: 30/10/2018 12:01
Received Date: 30/10/2018 12:00

Hi Helen,

Thanks for checking in! In terms of access to information—

- We have recommended that for the purposes of the Climate Change Response Act (which, among other things, governs the NZ Emissions Trading Scheme), the Commission would have equivalent access to information (and equivalent obligations of confidentiality) as an administering agency under the Act.

- We have also included a recommendation that the Commission have the authority to enter into information-sharing arrangements with government agencies (although we understood that it probably wouldn't need statutory provision for this).

- We considered access under the Statistics Act (eg, the Productivity Commission's explicit provisions to access statistical information as though it were a government department <<http://legislation.govt.nz/act/public/2010/0136/latest/DLM3104342.html>>), but understand that the relevant section of the Stats Act has been amended and no longer restricts that access to government departments, so haven't included any specific recommendations for this.

I'd also note that we have recommendations for an 'adaptation reporting power' which would allow the Minister to make regulations requiring central government, local government, and 'lifeline utility providers' to report on their assessment and management of risks from climate change – but this power, if used, would rest with Government, rather than the Commission.

Do you think there are any other barriers that we should consider? I know the treatment of Environmental Reporting data as Tier 1 statistics often means that we can't access that information until after it is published, but wasn't convinced that it would be appropriate to override that in the Zero Carbon legislation—do you know if any other entity has specific powers around that?

Kind regards,

Sam

From: Sue-Ellen Fenelon
Sent: Tuesday, 30 October 2018 11:28 AM
To: Helen Murdoch [SSC] <Helen.Murdoch@ssc.govt.nz>; Emma Corbett

<Emma.Corbett@mfe.govt.nz>
Cc: Samantha Hill <Samantha.Hill@mfe.govt.nz>
Subject: RE: ICCC Terms Of Reference Cabinet Paper

Hi Helen

[out of scope]

Sam – can you respond to the direct question in Helen's second bullet points, please.

Many thanks

Sue-Ellen

From: Helen Murdoch [SSC] <Helen.Murdoch@ssc.govt.nz <mailto:Helen.Murdoch@ssc.govt.nz> >
Sent: Tuesday, 30 October 2018 11:22 AM
To: Sue-Ellen Fenelon <Sue-Ellen.Fenelon@mfe.govt.nz <mailto:Sue-Ellen.Fenelon@mfe.govt.nz> >;
Emma Corbett <Emma.Corbett@mfe.govt.nz <mailto:Emma.Corbett@mfe.govt.nz> >
Subject: RE: ICCC Terms Of Reference Cabinet Paper

[IN-CONFIDENCE]

Thanks Sue-Ellen,

Great work from you and your team.

I wondered if you could give me an update on two things:

[out of scope]

- Will the ZCB give the Climate Commission any powers around requiring information from some entities to support its reporting and analysis functions? This is an area where our general view on machinery is that it is good for an entity to have the tools to do its functions. I understand that the policy in this area has gone through some change so it would be good to know the current status of the work and whether there are any issues there where I can be of assistance.

Kind regards,

Helen

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[out of scope]